

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1627

In Re: HENRY EARL MILLER,

Petitioner.

On Petition for Writ of Mandamus. (6:04-cr-00022-JMC; 6:17-cv-00805-JMC)

Submitted: July 19, 2018

Decided: July 24, 2018

Before WILKINSON, MOTZ, and AGEE, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Henry Earl Miller, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Henry Earl Miller petitions for a writ of mandamus, alleging that the district court has unduly delayed in ruling on his 28 U.S.C. § 2255 (2012) motion and seeking an order from this court directing the district court to act, and seeking an order recusing the district court judge. With respect to Miller's allegation that the district court has unduly delayed acting on his § 2255 motion, our review of the district court's docket reveals that the district court denied Miller's motion on June 12, 2018.

With respect to Miller's request for an order disqualifying the district court judge, we conclude that Miller is not entitled to mandamus relief. Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976); *United States v. Moussaoui*, 333 F.3d 509, 516-17 (4th Cir. 2003). Further, mandamus relief is available only when the petitioner has a clear right to the relief sought. *In re First Fed. Sav. & Loan Ass'n*, 860 F.2d 135, 138 (4th Cir. 1988). Finally, mandamus may not be used as a substitute for appeal. *In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007). Here, Miller has not appealed the district court's order denying his motion for recusal of the district court judge.

Accordingly, we grant leave to proceed in forma pauperis, deny Miller's petition alleging undue delay as moot, and deny Miller's petition seeking recusal of the district court judge. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED